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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Hanyu

Serial No.: 10/602,197

Confirmation No.: 2213

Filed: June 24, 2003

For: Heat-Sealable Films

§ Atty. Dkt. No.: COS-766DIV

§ Group Art Unit: 1732

§ Examiner: Eashoo

§ Cust. No.: 25264

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Honorable Commissioner:

| CERTIFICATE OF MAILING | |
|---|---------------------------------|
| 37 CFR 1.10 | |
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| <u>6/28/2006</u> Date | <u>[Signature]</u> Signature |

TRANSMITTAL LETTER AND FEE AUTHORIZATION

In connection with the above identified application, Applicants respectfully submit the following documents:

1. Reply Brief.

The Commissioner is authorized to charge the fee of \$500.00, along with any additional fees that may be required for this submission, or credit any overpayments, to Deposit Account No. 03-3345.

Respectfully submitted,

[Signature]

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Hanyu

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REPLY BRIEF

Appellants submit this Reply Brief to the Board of Patent Appeals and Interferences in response to the Examiner's Answer dated May 25, 2006.

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Arguments

As previously submitted, *Bothe* teaches a multilayer polypropylene film characterized by good optical properties. *See*, at least column 1, lines 5-15 and column 6, lines 30-39. The multilayer polypropylene film includes a base layer formed of a polypropylene having a melting point of 140°C or greater, such as isotactic polypropylene. *See*, at least column 2, lines 25-35. The multilayer polypropylene film further includes a top layer formed of a polypropylene having a mean length of syndiotactic sequences that is greater than 20 and a high melt flow index (*e.g.*, 28 g/10 min.) *See*, at least column 2 at lines 65-70 and column 5, lines 45 and 57.

Peet teaches a biaxially oriented multilayer film structure having a substrate formed from high density polyethylene and at least one skin layer (*e.g.*, surface layer) formed from syndiotactic polypropylene to improve barrier properties. *See*, column 2, lines 39 to 44 and column 4, lines 41 to 45. The syndiotactic polypropylene has a melt flow index of from about 1.5 g/10 min. to about 5 g/10 min. *See*, column 4, lines 10 to 15.

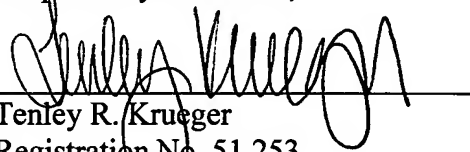
The Examiner maintains the assertion that it would be obvious to replace a high MFI polypropylene with a low MFI polypropylene simply because two references teach multilayer films. “Whether a particular combination might be ‘obvious to try’ is not a legitimate test of patentability.” *See, In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1998.) While both references are in the art of multi layer films, there is no motivation to combine the high melt flow polymer of *Bothe* with the low melt flow polymer of *Peet*.

The “Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” *See, In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998.) Further, if a proposal for modifying the prior art in an effort to attain the claimed invention causes the art to become inoperable or destroys its intended function, then the requisite motivation to make the modification would not have existed. *See, In re Fritch*, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992,) *In re Ratti*, 270 F.2d

810, 813, 123 U.S.P.Q. 349, 352 (C.C.P.A. 1959.) Herein, there is no suggestion, nor no reasonable expectation that replacing a high melt flow polymer with a low melt flow polymer would provide success. Therefore, a prima facie case of obviousness has not been presented (*e.g.*, while obvious to try argument has been presented, obviousness of success has not.)

In conclusion, the references of record do not teach, show or suggest producing a multilayer film having a substrate layer comprising a first crystalline thermoplastic polymer and a surface layer comprising a polymer consisting essentially of a syndiotactic propylene polymer having a melt flow index of less than 2 g/10 minutes, as recited in pending claim 21. Therefore, reversal of the rejection is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tenley R. Krueger", is written over a horizontal line.

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Appendix

Evidence

1. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1998.)
2. *In re Rouffet*, 149 F.3d 1350, 47 U.S.P.Q.2d 1453 (Fed. Cir. 1998.)